

§ 536.127 Proper claimants; unknown accused—under the UCMJ.

(a) A proper claimant under this subpart includes any individual (whether civilian or military), a business, charity, or state or local government that owns, has an ownership interest in, or lawfully possesses property.

(b) When cognizable claims are presented against a unit because the individual offenders cannot be identified, this subpart sets forth the procedures for approval authorities to direct pay assessments, equivalent to the amount of damages sustained, against the unit members who were present at the scene and to allocate individual liability in such proportion as is just under the circumstances.

§ 536.128 Effect of disciplinary action, voluntary restitution, or contributory negligence for claims under the UCMJ.

(a) *Disciplinary action.* Administrative action under Article 139, UCMJ, and this subpart is entirely separate and distinct from disciplinary action taken under other sections of the UCMJ or other administrative actions. Because action under both Article 139, UCMJ, and this subpart requires independent findings on issues other than guilt or innocence, a soldier's conviction or acquittal of claim-related charges is not dispositive of liability under Article 139, UCMJ.

(b) *Voluntary restitution.* The approval authority may terminate Article 139 proceedings without findings if the soldier voluntarily makes full restitution to the claimant.

(c) *Contributory negligence.* A claim otherwise cognizable and meritorious is payable whether or not the claimant was negligent.

§ 536.129 Claims cognizable as UCMJ claims.

Claims cognizable under Article 139, UCMJ, are limited to the following:

(a) *Requirement that conduct constructively violate UCMJ.* In order to subject a person to liability under Article 139, the soldier's conduct must be such as would constitute a violation of one or more punitive Articles of the UCMJ. However, a referral of charges is not a

prerequisite to action under this subpart.

(b) *Claims for property willfully damaged.* Willful damage is damage inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently, thoughtlessly or negligently. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts or acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others, may be considered willful damage.

(c) *Claims for property wrongfully taken.* A wrongful taking is any unauthorized taking or withholding of property, with the intent to deprive, temporarily or permanently, the owner or person lawfully in possession of the property. Damage, loss, or destruction of property through larceny, forgery, embezzlement, fraud, misappropriation, or similar offense may be considered wrongful taking. However, mere breach of a fiduciary or contractual duty that does not involve larceny, forgery, embezzlement, fraud, or misappropriation does not constitute wrongful taking.

(d) *Definition of property.* Article 139 provides compensation for loss of or damage to both personal property, whether tangible or intangible, and real property. Contrast this to the Personnel Claims Act and chapter 11 of AR 27–20, which provides compensation only for tangible personal property. Monetary losses may fall into the category of either tangible property (for example, cash), or intangible property (for example, an obligation incurred by a claimant to a third party as a result of fraudulent conduct by a soldier), although recovery for losses of intangible property may be limited by other provisions of this part, such as the exclusion of theft of services (see § 536.130(f)) or consequential damages (see § 536.130(g)).

(e) *Claims cognizable under more than one statute.* Claims cognizable under other claims statutes may be processed under this subpart.